TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

No. 79

(21,738.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 258.

J. H. WILLIAMS, PLAINTIFF IN ERROR,

vs.

J. E. WALSH, SHERIFF AND *EX OFFICIO* JAILER OF THE COUNTY OF CRAWFORD, KANSAS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

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1 In the Supreme Court of the State of Kansas.

No. 16198.

In the Matter of the Application of J. H. WILLIAMS for the Writ of Habeas Corpus.

Be it remembered, That on Wednesday, the 14th day of October 1908 there was filed in the office of the Clerk of the Supreme Court of the State of Kansas a Petition and Application for the Writ of Habeas Corpus, together with an affidavit of jurisdiction in the above entitled proceeding, which petition and affidavit are in the words and figures as follows, to-wit:

2 In the Supreme Court of the State of Kansas.

In re J. H. WILLIAMS, Petitioner for Writ of Habeas Corpus.

To the Honorable the Supreme Court of the State of Kansas:

The Petition of J. H. Williams, a Citizen of the United States and a Resident of the State of Missouri, to the said Court for the Award and Issuance of a Writ of Habeas Corpus in His Behalf.

Your petitioner states that he is a citizen and resident of the State of Missouri, and J. E. Walsh, hereinafter named, is the Sheriff and ex-officio Jailer of the County of Crawford in the State of Kansas, and is a citizen of the State of Kansas and a resident of the County of Crawford.

Your petitioner further respectfully shows unto the court that he is now incarcerated in the jail of the County of Crawford at the City of Pittsburg in the state of Kansas in pursuance of a commitment issued by O. S. Casad, a Justice of the Peace of the City of Pittsburg, in said County of Crawford and State of Kansas, a certified copy of which is hereunto annexed, Marked Exhibit "A" and made a part of this petition, and is therein held and detained against his will and without authority of law, and without due process of law, and is in the custody of said J. E. Walsh, as sheriff and jailer of said county of Crawford, in violation of the Constitutions of the United States and of the State of Kansas, and should be forthwith and at once restored to his liberty upon a writ of habeas corpus because of the facts and reasons which are hereinafter more fully and at large set forth.

Your petitioner further shows to the court that heretofore, to-wit, on June 6, 1908, a complaint was filed before O. S. Casad, a Justice of the Peace in and for the City of Pittsburg, Crawford County, Kansas, wherein the State of Kansas was Plaintiff and your Peti-
3 tioner was Defendant, which complaint was verified by the oath of one Frank Gilday, and a certified copy of the same is

hereto attached and made a part hereof, Marked Exhibit "B," and is in the words and figures following:

"Complaint.

"In the Justice Court, Before O. S. Casad, a Justice of the Peace in and for the City of Pittsburg, Crawford County, Kansas.

"THE STATE OF KANSAS, Plaintiff,
vs.
"J. H. WILLIAMS, Defendant.

"STATE OF KANSAS,
Crawford County, ss:

"Frank Gilday, of lawful age, being first duly sworn, on oath says, that in the County of Crawford, and State of Kansas, on the 3d day of June, A. D. 1908, the above named defendant, J. H. Williams, did then and there, unlawfully offer for sale, sell and deliver to one John Thomas, a coal miner, employed in shaft #17 of the Central Coal & Coke Company, a certain quantity of black powder, to be used in said coal mines situated in Crawford County, Kansas, said black powder then and there not being in an original package containing twelve and one half pounds, securely sealed, and there being at that time no existing contract for the sale of black powder to be used in said mines, contrary to the Statutes in said cases provided, and against the peace and dignity of the State of Kansas.

"(Signed) FRANK GILDAY.

"Subscribed and sworn to before me this 6th day of June, A. D. 1908.

"(Signed) O. S. CASAD,
"Justice of the Peace.

"STATE OF KANSAS,
"Crawford County, ss:

"I hereby certify that the above and foregoing is a true copy of the original complaint in the above entitled case, as the same remains on file in my office.

Pittsburg, Kansas, June 6, 1908.

"(Signed) O. S. CASAD,
"Justice of the Peace."

That pursuant to said complaint, and based thereon, a warrant was issued by said O. S. Casad, Justice of the Peace, for the arrest of your petitioner, a certified copy of which is hereto attached, marked Exhibit "C", and made part hereof; that said warrant was delivered to the said J. E. Walsh, Sheriff of Crawford County, Kansas, and pursuant thereto, your petitioner was arrested and taken in custody by said Walsh, as such Sheriff, as will particularly appear

by the return of said Sheriff endorsed on said Warrant, a certified copy thereof, marked Exhibit "C", being hereto attached, as aforesaid.

4 Your petitioner further shows to the court that on said sixth day of June, 1908, the Plaintiff, the State of Kansas, being represented therein by W. J. True, Assistant Prosecuting Attorney for said Crawford County, Kansas, and, your petitioner by Morris Cliggitt, Esquire, as his attorney, went to trial before said Justice of the Peace on said complaint, and on a stipulation as to the facts on which said complaint was based, which stipulation was in writing and a certified copy thereof is hereto attached, marked Exhibit "D", and made part hereof.

Your petitioner further states that no other evidence aside from said stipulated facts was by either party submitted to said Justice of the Peace and that thereupon said Justice of the Peace found your petitioner guilty as charged in said complaint, and ordered and adjudged that your petitioner pay into court a fine to the State of Kansas in the sum of Fifty ($50) Dollars and the costs of said action, amounting to Nine and 95/100 ($9.95) Dollars, and that your petitioner stand committed to the jail of Crawford County, Kansas, until said fine and costs should be paid or he be discharged by law, a duly certified transcript of the record and proceedings on said complaint before said Justice of the Peace being hereto attached, marked Exhibit "E", and made a part hereof.

Your petitioner further shows to the court that he having failed to comply with the conditions of said judgment or to pay said fine and costs, a commitment was issued by said O. S. Casad, Justice of the Peace, directed and delivered to said J. E. Walsh, as Sheriff of said Crawford County, Kansas, commanding said Sheriff to take and commit your petitioner to the jail of Crawford County, Kansas, there to remain until said judgment be complied with, and that thereupon said Sheriff did take and commit your petitioner to the jail of Crawford County, Kansas, on said June 6, 1908, where he remains incarcerated, a certified copy of which commitment, together with a copy of the return of said J. E. Walsh, as Sheriff of said County, duly certified, marked Exhibit "A", showing the commitment and incarceration of your petitioner in said jail of Crawford County, Kansas, is, as aforesaid, hereto attached, marked Exhibit "A", and made part hereof.

5 Your petitioner further shows that no appeal has been taken from said judgment of said Justice of the Peace, nor did your petitioner within twenty-four hours after the rendition of such judgment or at all enter into any recognizance to the State of Kansas conditioned for his appearance at the District Court of the County of Crawford at the next term thereof to answer the said complaint against him, and that the time for appealing from said judgment has expired and your petitioner has no remedy for his discharge from imprisonment in said jail other than by and through the writ of habeas corpus.

Your petitioner further shows to the court that he is incarcerated in said jail and restrained of his liberty, as aforesaid, solely by

color of the authority of the judgment and commitment rendered and issued on the complaint, aforesaid, and not by or under any other pretense or authority whatsoever, and he further shows that he is in custody, as aforesaid, in violation of the constitutions of the United States and of the State of Kansas, in the following particulars, to-wit:

Said complaint, judgment and commitment are founded solely on Chapter 250 of the Laws of Kansas of 1907, entitled "An Act to protect mines, miners and mine laborers, and defining the manner of sale and delivery of black powder for use in coal mines of the State of Kansas", and that said Justice of the Peace had no jurisdiction to render said judgment and issue such commitment, except such as is conferred by said Chapter 250 of said Laws of Kansas, which said Chapter 250 of said laws is null and void because the same is in conflict with the Fourteenth Amendment to the Constitution of the United States, and with the Constitution of the State of Kansas, in the following particulars:

1. Said Chapter 250 interferes with and restricts the right of private contract with reference to the sale of black powder in contravention of said Fourteenth Amendment to the Constitution of the United States and of the Constitution of the State of Kansas.

2. Said Chapter 250 discriminates unlawfully against persons buying or selling black powder to be used in any coal mine in the State of Kansas by restricting the sale thereof otherwise than in original packages containing twelve and one-half pounds of powder, whereas, all other persons selling black powder in the State of Kansas for use elsewhere than in a coal mine are permitted to sell the same in packages of any kind or character, and in quantities of any size, all in contravention of said Fourteenth Amendment to the Constitution of the United States and of the Constitution of the State of Kansas;

3. Said Chapter 250 is also in contravention of said Fourteenth Amendment to the Constitution of the United States and of the Constitution of the State of Kansas, in that it makes the vendor of black powder other than in original packages containing twelve and one-half pounds, which the purchaser intends to use in a coal mine in the State of Kansas, guilty of a criminal offense whether the vendor of such black powder knows of the intention of the purchaser thereof to so use the same or not, whereby said Chapter 250 has the effect of abridging the privileges and immunities of citizens of the United States and to deny persons within the jurisdiction of the State of Kansas the equal protection of the laws;

4. Said Chapter 250 also constitutes a discrimination against vendors of black powder for use in coal mines otherwise than in original packages containing twelve and one-half pounds of powder, in that it makes it a criminal offense, punishable by fine, for such vendor to sell such powder, but does not make it any offense whatsoever for the purchaser of such powder to buy the same, and that too even though the vendor may not be aware of the intention of such purchaser to use such powder in a coal mine in the State of Kansas.

5. Said Chapter 250 is also in contravention of said Fourteenth

amendment to the Constitution of the United States and of the Constitution of the State of Kansas in that it discriminated between vendors of black powder, oherwise than in packages containing twelve and one-half pounds to be used in coal mines in the State of Kansas, who have a contract for the sale of black powder to be so used in other size packages in existence at the time said
7 chapter 250 became a law, than such vendors who are not possessed of such a contract;

6. Said Chapter 250 is also in conflict with said Fourteenth Amendment to the Constitution of the United States and with the Constitution of the State of Kansas, in that it imposes a fine of not exceeding Fifty ($50) Dollars against any person violating said act by the sale of black powder for use in a coal mine in the State of Kansas, and imposes a different fine, to-wit, not exceeding Ten ($10) Dollars upon any person who shall violate the provisions of said act, by taking powder into any coal mine in the State of Kansas in any manner other than in an original package containing twelve and one half pounds of black powder.

Your petitioner therefore respectfully submits that the entire proceeding against him by the result of which he has been deprived of his liberty is without jurisdiction and null and void and that he is in custody in violation of the Constitution of the United States, and of the State of Kansas.

Wherefore, He avers that he is illegally restrained of his liberty by J. E. Walsh, the Sheriff and ex-officio jailer of Crawford County, State of Kansas, and respectfully requests that the court shall here and now grant a writ of habeas corpus directed to the said J. E. Walsh, Sheriff, as aforesaid, commanding him to have and produce the body of your petitioner before the Supreme Court of the State of Kansas on a day therein to be fixed for the return of said writ.

CHAS. BLOOD SMITH,
DANIEL B. HOLMES,
Attorneys for Petitioner.

STATE OF KANSAS,
Crawford County, ss:

J. H. Williams, being first duly sworn states, that he has read the foregoing petition and knows the contents thereof; that the facts therein averred are within his personal knowledge, and that the statements as to such facts contained in such petition are true, and affiant further saith not.

J. H. WILLIAMS.

Subscribed and sworn to before me this 13 day of October, 1908. My commission expires July 20, 1910.

[SEAL.] DAVID LOCHEAD,
Notary Public, Crawford County, Kansas.

8 EXHIBIT B.

Complaint.

In the Justice Court, Before O. S. Casad, a Justice of the Peace in and for the City of Pittsburg, Crawford County, Kansas.

THE STATE OF KANSAS, Plaintiff,
vs.
J. H. WILLIAMS, Defendant.

STATE OF KANSAS,
Crawford County, ss:

Frank Gilday, of lawful age, being first duly sworn, on oath says that in the County of Crawford, and State of Kansas, on the 3rd day of June A. D. 1908, the above named defendant, J. H. Williams, did then and there, unlawfully offer for sale, sell and deliver to one John Thomas, a coal miner, employed in shaft #17 of the Central Coal and Coke Company, a certain quantity of black powder, to be used in said coal mines situated in Crawford County, Kansas, said black powder then and there not being in an original package containing twelve and one-half pounds, securely sealed, and there being at that time no existing contract for the sale of black powder to be used in said mines, contrary to the Statutes in said cases provided, and against the peace and dignity of the State of Kansas.

FRANK GILDAY.

Subscribed and sworn to before me this the 6th day of June, A. D. 1908.

O. S. CASAD,
Justice of the Peace.

Endorsed on back: No. —. The State of Kansas, Pl'f, vs. J. H. Williams, Def. Complaint. Filed June 6, 1908. O. S. Casad, Justice of the Peace. W. J. True.

9 EXHIBIT C.

STATE OF KANSAS,
Crawford County, ss:

The State of Kansas to the Sheriff or any Constable of Crawford County:

Whereas, complaint in writing, under oath of Frank Gilday has been made to me, and it appearing that there are reasonable grounds for believing that on the 3d day of June 1908, in Crawford County and State of Kansas, one J. H. Williams did then and there unlawfully; offer for sale, sell and deliver to one John Thomas, a coal miner, employed in shaft #17 of the Central Coal and Coke Com-

pany, a certain quantity of black powder, to be used in said coal mines situated in Crawford County, Kansas, said black powder then and there not being in an original package containing twelve and one half pounds, securely sealed, and there being at that time no existing contract for the sale of black powder to be used in said mines, Contrary to the provisions of the statutes in such cases made and provided, and against the peace and dignity of the State of Kansas.

You are therefore commanded, forthwith to arrest said J. H. Williams and bring him before me at my office — Pittsburg in Baker township in said County, to answer to said charge; and then and there return this writ.

Witness my hand at my office in Pittsburg in Baker township in said county, this 6th day of June, 1908.

O. B. CASAD.
Justice of the Peace.

(Endorsed:) Warrant. The State of Kansas *vs.* Plaintiff vs. J. H. Williams, Defendant. Filed this 6th day of June 1908. O. S. Casad, Justice of the Peace. Received this writ June 6th, 1908. June 6, 1908 executed the same by arresting the within named J. H. Williams and bringing him before the within named Justice of the Peace. J. E. Walsh, Sheriff. Constable's fees: Serving Writ (first person) .75. Total .75. J. E. Walsh, Sheriff.

10 EXHIBIT D.

In the Justice Court, Before O. S. Casad, Justice of the Peace, in and for the City of Pittsburg, Crawford County, Kansas.

THE STATE OF KANSAS, Plaintiff,
vs.
J. H. WILLIAMS, Defendant.

Stipulation.

It is stipulated in the above entitled cause that in the county of Crawford and State of Kansas on the 3d day of June A. D. 1908, the defendant in this case did sell and deliver to John Thomas in said county and state, a coal miner, employed in shaft number seventeen (17) of the Central Coal & Coke Company, within said County and State a certain quantity of black powder to be used in said coal mine, situated in said county and state, said black powder then and there not being in an original package, containing twelve and one half pounds, securely sealed, and that then and there, there was not an existing contract for the sale of black powder, to be used in said mine.

It is further agreed that said sale and delivery was made in the usual course of business and the said John Thomas presented himself

voluntarily to buy the same and that the same was sold as above stated, in the usual and ordinary course of business.

The defendant contends that chapter 250 of the Laws of Kansas of 1907 under which the arrest in this case is made, is unconstitutional and void, as violative of section one, of the Bill of Rights, of the State of Kansas and also void because it is the violation of section one, of article fourteen (14) of the amendments to the constitution of the United States.

In testimony whereof, We have hereunto subscribed our names this 6th day of June, 1908.

MORRIS CLIGGETT,
Attorney for Defendant.
W. J. TRUE,
Assistant Prosecuting Attorney, Crawford Co., Kans.

(Endorsed:) No. —. The State of Kansas Pl'ff vs. J. H. Williams Def't. Stipulations. Filed June 6, '08. O. S. Casad.

11 EXHIBIT E.

Justice Criminal Docket.

STATE OF KANSAS,
County of Crawford, ss:

Before O. S. Casad, Justice of the Peace in and for the City of Pittsburg, in Said County.

No. A—526.

STATE OF KANSAS, Plaintiff.
vs.
J. H. WILLIAMS, Defendant.

Criminal Action.

June 6th, 1908.—Frank Gilday made complaint in writing, under oath, charging that in the County of Crawford, State of Kansas, on the 3rd day of June, 1908, the above named defendant, J. H. Williams, did then and there unlawfully offer for sale, sell and deliver to one John Thomas, a coal miner, employed in shaft #17 of the Central Coal and Coke Company, a certain quantity of black powder to be used in said coal mines situated in Crawford County, Kansas, said black powder then and there not being in an original package containing twelve and one half pounds, securely sealed, and there being at that time no existing contract for the sale of black powder to be used in said mines, contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Kansas.

June 6th, 1908.—Warrant issued for the arrest of the defendant and delivered to J. E. Walsh, sheriff.

June 6th, 1908.—Warrant returned, executed, and defendant in court. Whereupon appeared the state by deputy county attorney, W. J. True, and defendant appeared in person and by his attorney, Morris Cliggett, and both being ready for trial the complaint being read to the defendant, defendant pleaded not guilty.

Thereupon the state introduced its testimony, the same being a stipulation and agreed statement of facts, in words and figures as follows, to-wit:

12 In Justice Court, Before O. S. Casad, Justice of the Peace in and for the City of Pittsburg, Crawford County, Kansas.

THE STATE OF KANSAS, Plaintiff,
vs.
J. H. WILLIAMS, Defendant.

Stipulation.

It is stipulated in the above entitled case, that in the county of Crawford and State of Kansas on the 3rd day of June, A. D. 1908, the defendant in this case did sell and deliver to John Thomas in said county and state, a coal miner, employed in shaft number seventeen (17) of the Central Coal and Coke Company, within said county and state a certain quantity of black powder to be used in said coal mine, situated in said county and state, said black powder then and there not being in an original package, containing twelve and one half pounds, securely sealed, and that then and there, there was not an existing contract for the sale of black powder, to be used in said mine.

It is further agreed that said sale and delivery was made in the usual course of business and the said John Thomas presented himself voluntarily to buy the same and that the same was sold as above stated, in the usual and ordinary course of business.

The defendant contends that chapter 250 of the Laws of Kansas of 1907 under which the arrest in this case is made, is unconstitutional and void, as violative of section one, of the Bill of Rights, of the State of Kansas and also void because it is the violation of section one, article fourteen (14) of the amendments to the constitution of the United States.

In testimony whereof, We have hereunto subscribed our names this 6th day of June, 1908.

MORRIS CLIGGETT,
Attorney for Defendant.
W. J. TRUE,
Ass't Prosecuting Att'y, Crawford Co., Kan.

13 Thereupon the State rested, and the defendant failed to introduce any testimony, but rested on the testimony of the State produced; and thereupon said case was argued to the court; the court, after hearing testimony and argument of counsel and being

fully advised in the premises, I do find the defendant guilty as charged in the complaint. It is therefore considered, ordered and adjudged that the defendant, J. H. Williams, pay a fine to the State of Kansas in the sum of $50.00 and the costs of the case taxed at $9.95, and stand committed to the jail of Crawford County until said fine and costs be paid or he be discharged by law.

O. S. CASAD,
Justice of the Peace.

June 6th, 1908.—Commitment issued and delivered to J. E. Walsh, sheriff.

June 6th, 1908.—Writ returned executed by delivering the prisoner to the jail in Crawford County, Kansas.

(Signed) J. E. WALSH.

14 EXHIBIT A.

Commitment for Fine and Costs.

STATE OF KANSAS,
Crawford County, ss:

The State of Kansas to J. E. Walsh, Sheriff of said County:

Whereas, on the 6th day of June 1908 in a cause then pending before me, the undersigned, a Justice of the Peace of the City of Pittsburg, wherein the State of Kansas was plaintiff, and J. H. Williams, defendant, judgment was rendered that the defendant pay a fine to the State of Kansas in the sum of $50.00, and the further sum of $— costs herein, and that —— stand committed to the jail of Crawford County, Kansas, until such fine and costs are paid, and whereas said defendant, J. H. Williams, has failed to comply with the conditions of said judgment, you are therefore commanded to take and commit said defendant, J. H. Williams, to the jail of Crawford County, there to remain until said judgment be complied with.

Given under my hand this 6 day of June, 1908.

O. S. CASAD,
Justice of the Peace.

Indorsed on back as follows: Commitment. State of Kansas, Plaintiff, vs. J. H. Williams, Defendant.

15 STATE OF KANSAS,
Crawford County, ss:

I, O. S. Casad, Justice of the Peace in and for the City of Pittsburg, Crawford County, Kansas, do hereby certify that the above and foregoing complaint, warrant, stipulation, journal entry and commitment are true and correct copies of the files and journal entries in the case of The State of Kansas, vs. J. H. Williams.

Dated this the 4th day of September, 1908.

O. S. CASAD,
Justice of the Peace.

County Clerk's Certificate.

STATE OF KANSAS,
Crawford County, ss:

I, Fred A. Gerkin, County Clerk of the county and state aforesaid, do hereby certify that O. S. Casad, is a regular and acting Justice of the Peace in and for the City of Pittsburg Crawford County, Kansas, duly elected and qualified on the 6th day of November, 1906, to serve two years until January 10, 1909. To all whose official acts as such officer, full faith and credit are and ought to be given.

In testimony whereof I have hereunto set my hand and fixed my official seal at my office in Girard, Kansas, this the 5 day of Sept., A. D. 1908.

FRED A. GERKIN,
County Clerk,

[SEAL.] By —— ——, *Deputy.*

(Endorsed:) In re J. H. Williams. Petition for Writ of Habeas Corpus. Filed Oct. 14, 1908. D. A. Valentine, Clerk Supreme Court. Chas. Blood Smith, Daniel B. Holmes.

16 Be it further remembered, that on the same day, to-wit, Wednesday the 14th day of October, 1908, the same being one of the regular judicial days of the July 1908 term of the supreme court of the state of Kansas, said court being in session at its court room in the city of Topeka, the following proceeding among others was had and remains of record at page 15 of Journal "MM" of said court in words and figures as follows, to-wit:

17 In the Supreme Court of the State of Kansas, Wednesday, October 14, 1909.

P. 15, Journal "MM".

No. 16198.

In re J. H. WILLIAMS.

Journal Entry—Writ Attached.

Now comes the petitioner by Charles Blood Smith and Daniel B. Holmes his attorneys and presents his verified petition praying that for the reasons set out in said petition the writ of habeas corpus issue to J. E. Walsh, Sheriff of Crawford County, Kansas, commanding him to have the body of the said petitioner before the Supreme Court and to show by what authority he detains him in his custody and restrains him of his liberty; and praying further, that upon the return of said Writ and upon the final hearing of this petition

he may be released from such custody and accorded his liberty. Upon consideration whereof, it is *ordered* that the writ of habeas corpus prayed for be issued, returnable on the 5th day of November, 1908, at 9:30 o'clock, A. M.

18 Be it further remembered, that also on the same day to-wit, Wednesday the 14th. day of October, 1908, in pursuance of an order of the Supreme Court allowing the application for the Writ of Habeas Corpus, said Writ was issued by the clerk to the Respondent and service of said Writ was duly acknowledged and accepted by said Respondent, and the Writ and the Acceptance of service thereof, were filed in the office of the clerk of the Supreme Court of the State of Kansas, which Writ, etc., with the endorsements thereon, is in words and figures as follows, to-wit:

19 In the Supreme Court of the State of Kansas.

In re J. H. WILLIAMS, Petitioner.

The State of Kansas to J. E. Walsh, Sheriff and Jailer of the County of Crawford, State of Kansas, Greeting:

We command you that the body of J. H. Williams, in your custody detained as it is said, together eith the day and cause of his *caption* and detention, you safely have before the Supreme Court of the State of Kansas, on the 5th day of November, A. D. 1908, at 9:30 o'clock A. M. of said day, then and there to do all and singular those things which the said court shall then and there consider with him in this behalf, and have you then and there this writ.

Witness my hand, attested by the seal of said court, this 14th day of Oct. 1908.

D. A. VALENTINE,
Clerk of the Supreme Court of the State of Kansas.

Service of above writ waived Oct. 14, 1908.

F. S. JACKSON,
Att'y Gen. and Att'y for J. E. Walsh, Sheriff.

(Endorsed:) In re J. H. Williams. H. C. Copy of writ. Filed Oct. 14, 1908. D. A. Valentine, Clerk Supreme Court.

20 And afterwards, on Monday the 2nd day of November, 1908, the same being one of the regular judicial days of the July, 1908 term of the Supreme Court of the State of Kansas, said court being in session at its court room in the city of Topeka, the following proceeding together with others was had and remains of record at page 25 of Journal "MM" in words and figures as follows, to-wit:

And also on the same day there was filed in the office of the Clerk of the Supreme Court of the State of Kansas an Amendment to the

Application for Writ of Habeas Corpus, which Amendment is in words and figures as follows, to-wit:

21 In the Supreme Court of the State of Kansas, Monday, Nov. 2nd, 1908.

No. 16198.

In re J. H. WILLIAMS.

J. E. Allowing Amendment to Writ of Habeas Corpus.

On application of Charles Blood Smith one of the attorneys for the Petitioner, it is *ordered* that the petitioner be given leave to file an amendment to the application for a Writ of Habeas Corpus; and that after the return to said Writ has been filed, that the said petitioner have ten days within which to file an answer to the return.

It is further ordered that this proceeding be set down for hearing at the December 1908 session and assigned for December 7th.

22 In the Supreme Court of the State of Kansas.

In re J. H. WILLIAMS, Petitioner, for Writ of Habeas Corpus.

To the Honorable The Supreme Court of the State of Kansas:

Now comes J. H. Williams, the above named petitioner, by his attorneys, and by leave of court amends his petition heretofore presented to this court for writ of habeas corpus, by inserting after the sixth paragraph thereof the following allegations:

7. The black powder sold and delivered by your petitioner to the said John Thomas was enclosed in an original and unbroken package, containing twenty-five pounds of such powder, which original and unbroken package was imported into the State of Kansas from the State of Missouri by the Central Coal & Coke Company, of which company your petitioner was the agent and representative in selling and delivering such original and unbroken package of powder, and your petitioner avers that black powder is, and for many years has been, put up by manufacturers thereof and sold and transported among the several states of the Union, in original packages containing twenty-five (25) pounds of such powder, and said Chapter 250 is in contravention of article 1 of section 8 of the Constitution of the United States, which declares that, "the Congress shall have power to regulate commerce among the several states", in that said act prohibits the sale of black powder for use in any coal mine in the State of Kansas otherwise than in original packages containing neither more nor less than twelve and one-half (12½) pounds of such powder. Black Powder is an article of commerce among the several states, and there is no difference in effect between the power to prohibit the sale thereof, otherwise than in twelve and one-half

(12½) pound packages, as aforesaid, and the power to prohibit its introduction into the country otherwise than in package- containing twelve and one-half (12½) pounds, as aforesaid.

23 And your petitioner further states that black powder in original packages of twelve and one-half (12½) pounds each cannot be bought or sold in the market except at a considerably higher price per pound of such powder than the same powder can be bought or sold for in the market in original packages of twenty-five (25) pounds each, and that such powder has heretofore been customarily bought and sold in original packages of twenty-five (25) pounds each.

J. H. WILLIAMS.

STATE OF KANSAS,
County of Crawford, ss:

J. H. Williams being first duly sworn states that he has read the foregoing amendment to his original petition for writ of habeas corpus, and known the contents thereof; that the facts therein averred are true, and affiant further saith not.

J. H. WILLIAMS.

Subscribed and sworn to before me this 30th day of October 1908.

My commission expires July 20th, 1910.

[SEAL.] DAVID LOCHEAD,
Notary Public in and for Crawford County, Kansas.

(Endorsed:) In re J. H. Williams. Amendment to Application for Writ. Filed Nov. 2, 1908. D. A. Valentine, Clerk Supreme Court.

24 And afterwards, on Thursday the 5th day of November, 1908, there was filed in the office of the Clerk of the Supreme Court of the State of Kansas, the Return and Answer of J. E. Walsh, Sheriff of Crawford County, Kansas and Respondent herein to the Writ of Habeas Corpus, which Return and Answer are in words and figures as follows, to-wit:

25 In the Supreme Court of the State of Kansas.

No. 16198.

In re J. H. WILLIAMS.

Return.

Comes now, J. E. Walsh, Respondent in the above entitled cause and for his Return to the Writ heretofore issued in this cause says:—

That he admits that he is Sheriff and Ex-officio Jailer of the County of Crawford, in the State of Kansas, and is a resident and

citizen of the County of Crawford and State of Kansas, and he admits that the Petitioner, J. H. Williams is in his custody and is now incarcerated in the Jail of Crawford County, Kansas, in the City of Pittsburg, and he admits that O. S. Casad is a Justice of the Peace of the City of Pittsburg, in Crawford County, Kansas.

And this Respondent further answering shows the Court that he restrains the said Petitioner of his liberty by reason of a certain commitment issued by the said O. S. Casad, Justice of the Peace, of the City of Pittsburg, in Crawford County, in the State of Kansas, which said commitment is fully described in the Petitioner's Application for this Writ,

That this Respondent has not been informed and does not now know that the said commitment, for any reason, is void and of no force, and that he has been advised by those learned in the law that it is his duty to obey the mandate of the said commitment, but in obedience to the said Writ of Habeas Corpus this Respondent now has here and presents the body of the said J. H. Williams in Answer to the Writ of Habeas Corpus issued out of this Court.

J. E. WALSH,
Sheriff of Crawford County, Kansas.

STATE OF KANSAS,
Crawford County, ss:

Subscribed and sworn to before me this 4th day of November, 1908.

[SEAL.]

C. N. PRICE,
Clerk Dist. Court.
By E. M. MASON,
Deputy Clk.

(Endorsed:) 16198. In the Supreme Court of the State of Kansas. In re J. H. Williams. Sheriff's Return. Filed Nov. 5, 1908. D. A. Valentine, Clerk Supreme Court.

26 And on the same day, to-wit: Thursday, the 5th day of November, 1908, there was filed in the office of the Clerk of the Supreme Court of the State of Kansas the Answer of the Petitioner to the Return of the Respondent, which answer of the Petitioner with the endorsements thereon is in words and figures as follows, to-wit:

27 In the Supreme Court of the State of Kansas.

In re J. H. WILLIAMS, Petitioner, for Writ of Habeas Corpus.

And now comes J. H. Williams by his attorneys, and for answer to the return heretofore made by J. E. Walsh, Sheriff and ex-officio Jailer of the County of Crawford, in the State of Kansas, in obedience to the writ of habeas corpus heretofore issued against said J. E. Walsh, the said J. H. Williams alleges:

That he is a citizen and resident of the State of Missouri, and that the said J. E. Walsh is a citizen and resident of the State of Kansas; that the commitment issued by the said O. S. Casad, Justice of the Peace of the City of Pittsburg, in the County of Crawford, in the State of Kansas, a certified copy of which is hereto attached, marked "Exhibit A" and made a part of this answer, under which the said J. E. Walsh claims to hold and detain said petitioner, is void, for the reasons hereinafter more fully set forth, and said petitioner is held by the said J. E. Walsh without authority of law and without due process of law, and is so held in the custody of the said J. E. Walsh as Sheriff and Jailer ex-officio of said County of Crawford, in violation of the Constitution of the United States and of the State of Kansas.

And said petitioner further answering said return of said J. E. Walsh shows to the Court that heretofore, to-wit, on the 6th day of June, 1908, a complaint was filed before O. S. Casad, a Justice of the Peace in and for the City of Pittsburg, Crawford County, Kansas, wherein the State of Kansas was plaintiff and your petitioner was defendant, which complaint was verified by the oath of one Frank Gilday, and a certified copy of the same is hereto attached and made a part hereof, marked "Exhibit B", and is in the words and figures following:

28 *"Complaint.*

In the Justice Court, Before O. S. Casad, a Justice of the Peace in and for the City of Pittsburg, Crawford County, Kansas.

THE STATE OF KANSAS, Plaintiff,
vs.
J. H. WILLIAMS, Defendant.

STATE OF KANSAS,
Crawford County, ss:

Frank Gilday, of lawful age, being first duly sworn, on oath says, that in the county of Crawford, and State of Kansas, on the 3rd day of June, A. D. 1908, the above named defendant, J. H. Williams, did then and there, unlawfully offer for sale, sell and deliver to one John Thomas, a coal miner, employed in shaft #17 of the Central Coal & Coke Company, a certain quantity of black powder, to be used in said coal mines situated in Crawford County, Kansas, said black powder then and there not being in an original package containing twelve and one-half pounds, securely sealed, and there being at that time no existing contract for the sale of black powder to be used in said mines, contrary to the Statutes in said cases provided, and against the peace and dignity of the State of Kansas.

(Signed) FRANK GILDAY.

Subscribed and sworn to before me this 6th day of June, A. D. 1908.

(Signed) O. S. CASAD,
Justice of the Peace.

STATE OF KANSAS,
Crawford County, ss:

I hereby certify that the above and foregoing is a true copy of the original complaint in the above entitled case, as the same remains on file in my office. Pittsburg, Kansas, June 6, 1908.

(Signed) O. S. CASAD,
Justice of the Peace."

That pursuant to said complaint, and based thereon, a warrant was issued by said O. S. Casad, Justice of the Peace, for the arrest of your petitioner, a certified copy of which is hereto attached, marked "Exhibit C" and made a part hereof; that said warrant was delivered to the said J. E. Walsh, sheriff of Crawford County, Kansas, and pursuant thereto your petitioner was arrested and taken into custody by said Walsh as such sheriff, as will particularly appear by the return of said sheriff endorsed on said warrant, a certified copy of which, marked "Exhibit C", being hereto attached, as aforesaid.

Your petitioner further shows to the Court that on said
29 sixth day of June, 1908, the plaintiff, the State of Kansas, being represented therein by W. J. True, Assistant Prosecuting Attorney for said Crawford County, Kansas, and, said petitioner by Morris Cliggitt, Esquire, as his attorney, went to trial before said Justice of the Peace on said complaint, and on a stipulation as to the facts on which said complaint was based, which said stipulation was in writing and a certified copy thereof is hereto attached, marked "Exhibit D" and made part hereof.

And said petitioner, further answering, states that no other evidence aside from said stipulated facts was by either party submitted to said Justice of the Peace and that thereupon said Justice of the Peace found said petitioner guilty as charged in said complaint, and ordered and adjudged that said petitioner pay into court a fine to the State of Kansas in the sum of Fifty Dollars ($50.00) and the costs of said action, amounting to Nine and 95/100 Dollars ($9.95), and that said petitioner stands committed to the jail of Crawford County, Kansas, until said fine and costs should be paid or he be discharged by law, a duly certified transcript of the record and proceedings on said complaint before said Justice of the Peace being hereto attached, marked "Exhibit E" and made a part hereof.

Said petitioner, further answering, shows to the court that he having failed to comply with the conditions of said judgment or to pay said fine and costs, a commitment was issued by said O. S. Casad, Justice of the Peace, directed and delivered to said J. E. Walsh, as sheriff of said Crawford County, Kansas, commanding said sheriff to take and commit said petitioner to the jail of Crawford County, Kansas, there to remain until said judgment be complied with, and that thereupon said sheriff did take and commit said petitioner to the jail of Crawford County, Kansas, on said June 6, 1908, where he remains incarcerated, a certified copy of which commitment, together with a copy of the return of said J. E. Walsh, as sheriff of said County, duly certified, marked "Exhibit A", show-

ing the commitment and incarceration of said petitioner in said jail of Crawford County, Kansas, is, as aforesaid, hereto attached, marked "Exhibit A" and made a part hereof.

30 And said petitioner, further answering, shows that no appeal has been taken from said judgment of said Justice of the Peace, nor did said petitioner within twenty-four hours after the rendition of such judgment or at all enter into any recognizance to the State of Kansas conditioned for his appearance at the District Court of the County of Crawford at the next term thereof to answer the said complaint against him, and that the time for appealing from said judgment has expired and said petitioner has no remedy for his discharge from imprisonment in said jail other than by and through the writ of habeas corpus.

Said petitioner, further answering, shows to the Court that he is incarcerated in said jail and restrained of his liberty, as aforesaid, solely by color of the authority of the judgment and commitment rendered and issued on the complaint aforesaid, and not by or under any other pretense or authority whatsoever, and he further shows that he is in custody as aforesaid in violation of the Constitution of the United States and of the State of Kansas, in the following particulars; to-wit:

Said complaint, judgment and commitment are founded solely on Chapter 250 of the Laws of Kansas of 1907, entitled "An Act to protect mines, miners and mine-laborers, and defining the manner of sale and delivery of black powder for use in coal mines of the State of Kansas," and that said Justice of the Peace had no jurisdiction to render said judgment and issue such commitment, except such as is conferred by Chapter 250 of said Laws of Kansas, which said Chapter 250 of said laws is null and void because the same is in conflict with the Fourteenth Amendment to the Constitution of the United States, and with the Constitution of the State of Kansas in the following particulars:

1. Said Chapter 250 interferes with and restricts the right of private contract with reference to the sale of black powder in contravention of said Fourteenth Amendment to the Constitution of the United States and of the Constitution of the State of Kansas;

2. Said Chapter 250 discriminates unlawfully against persons buying or selling black powder to be used in any coal mine in the State of Kansas by restricting the sale thereof unless in orig-

31 inal packages containing twelve and one-half pounds of powder, whereas, all other persons selling black powder in the State of Kansas for use elsewhere than in a coal mine are permitted to sell the same in packages of any kind or character, and in any quantities of any size, all in contravention of said Fourteenth Amendment to the Constitution of the United States and of the Constitution of the State of Kansas;

3. Said Chapter 250 is also in contravention of said Fourteenth Amendment of the Constitution of the United States and of the Constitution of the State of Kansas in that it makes the vendor of black powder other than in original packages containing twelve and one-half pounds, which the purchaser intends to use in a coal

mine in the State of Kansas, guilty of a criminal offense whether the vendor of such black powder knows of the intention of the purchaser thereof to so use the same or not, whereby said Chapter 250 has the effect of abridging the privileges and immunities of citizens of the United States and to deny persons within the jurisdiction of the State of Kansas the equal protection of the laws;

4. Said Chapter 250 also constitutes a discrimination against vendors of black powder for use in coal mines otherwise than in original packages containing twelve and one-half pounds of powder, in that it makes it a criminal offense, punishable by fine, for such vendor to sell such powder, but does not make it any offense whatsoever for the purchaser of such powder to buy the same, and that too, even though the vendor may not be aware of the intention of such purchaser to use such powder in a coal mine in the State of Kansas.

5. Said Chapter 250 is also in contravention of said Fourteenth Amendment to the Constitution of the United States and of the Constitution of the State of Kansas in that it discriminates between vendors of black powder, otherwise than in packages containing twelve and one-half pounds to be used in coal mines in the State of Kansas, who have a contract for the sale of black powder to be so used in other size packages in existence at the time said Chapter 250 became a law, than such vendors who are not possessed of such a contract;

6. Said Chapter 250 is also in conflict with said Fourteenth
32 Amendment to the Constitution of the United States and with the Constitution of the State of Kansas, in that it imposes a fine of not exceeding Fifty Dollars ($50.00) against any person violating said act by the sale of black powder for use in a coal mine in the State of Kansas, and imposes a different fine, to-wit, not exceeding Ten Dollars ($10.00) upon any person who shall violate the provisions of said act, by taking powder into any coal mine in the State of Kansas in any manner other than in an original package containing twelve and one-half pounds of black powder.

7. The black powder sold by said petitioner and delivered to the said John Thomas was enclosed in an original and unbroken package, containing twenty-five pounds of such powder, which original and unbroken package was imported into the State of Kansas from the State of Missouri by the Central Coal & Coke Company, of which Company said petitioner was the agent and representative in selling and delivering such original and unbroken package of powder, and said petitioner avers that black powder is, and for many years has been, put up by manufacturers thereof and sold and transported among the several states of the Union, in original packages containing twenty-five (25) pounds of such powder, and said Chapter 250 is in contravention of article 1 of section 8 of the Constitution of the United States, which declares that "The Congress shall have power to regulate commerce among the several states," in that said act prohibits the sale of black powder for use in any coal mine in the State of Kansas otherwise than in original packages containing neither more nor less than twelve and

one-half (12½) pounds of such powder. Black powder is an article of commerce among the several states, and there is no difference in effect between the power to prohibit the sale thereof, otherwise than in twelve and one-half (12½) pound packages, as aforesaid, and the power to prohibit its introduction into the country otherwise than in packages containing twelve and one-half (12½) pounds as aforesaid. And your petitioner further states that black powder in original packages of twelve and one-half (12½) pounds cannot be bought or sold in the market except at a considerably higher price per pound of such powder than the same powder
33 can be bought or sold for in the market in original packages of twenty-five pounds each, and that such powder has heretofore been customarily bought and sold in original packages of twenty-five (25) pounds each.

Said petitioner therefore respectfully submits that the entire proceeding against him by the result of which he has been deprived of his liberty is without jurisdiction and null and void and that he is in custody in violation of the Constitution of the United States, and of the State of Kansas.

Wherefore, he avers that he is illegally restrained of his liberty by the said J. E. Walsh, the sheriff and ex-officio jailer of Crawford County, Kansas, and respectfully requests that the Court shall here and now enter an order discharging him from such custody of said J. E. Walsh for the reasons aforesaid.

J. H. WILLIAMS,
By DAN'L B. HOLMES AND
CHAS. BLOOD SMITH,
His Att'ys.

It is admitted by the respondent that the allegations set forth in the foregoing answer are true, but it is not admitted that any facts or allegations were proven in the trial before the Justice of the Peace save and except such as are set forth in the stipulation entered into between the Attorneys upon the trial of the original action before the Justice of the Peace.

O. T. BOAZ,
Att'y for Respondent.

Nov. 5th 1908.

34 EXHIBIT A.

STATE OF KANSAS,
Crawford County, ss:

The State of Kansas to J. E. Walsh, Sheriff of said County:

Whereas, on the 6 day of June 1908 in a cause then pending before me, the undersigned, a Justice of the Peace of The City of Pittsburg wherein the State of Kansas was plaintiff, and J. H. Williams defendant, judgment was rendered that the defendant pay a fine to the State of Kansas in the sum of $50.00 and the further sum of $9.95 costs herein, and that he stand committed to the jail of

Crawford County, Kansas, until such fine and costs are paid, and whereas said defendant J. H. Williams has failed to comply with the conditions of said judgment, you are therefore commanded to take and commit said defendant J. H. Williams to the jail of Crawford County, there to remain until said judgment be complied with.

Give under my hand this 6 day of June 1908.

O. S. CASAD,
Justice of the Peace.

STATE OF KANSAS,
Crawford County, ss:

I hereby certify that the above and foregoing is a true copy of the commitment issued in the above entitled case.

In testimony whereof I have hereunto subscribed my name this 6th day of June, 1908.

O. S. CASAD,
Justice of the Peace.

Received this Writ June 6 1908. According to the commands thereof I committed J. H. Williams to the jail of Crawford County, and delivered a copy of this writ to the jailer thereof.

This 6 day of June 1908.

J. E. WALSH, *Sheriff.*

STATE OF KANSAS,
Crawford County, ss:

I certify the above to be the times and manner of executing the within writ.

J. E. WALSH, *Sheriff.*

35 Endorsed: No. —. Commitment. State of Kansas, Plaintiff, vs. J. H. Williams, Defendant. Filed June 6 1908. O. S. Casad, Justice of the Peace. Judgment $50.00, Service, first person, $.25; Copies of Execution, .15; Total, $.40.

36 EXHIBIT B.

In the Justice Court, Before O. S. Casad, a Justice of the Peace, in and for the City of Pittsburg, Crawford County, Kansas.

THE STATE OF KANSAS, Plaintiff,
vs.
J. H. WILLIAMS, Defendant.

STATE OF KANSAS,
Crawford County, ss:

Frank Gilday, of lawful age, being first duly sworn, on oath says, that in the County of Crawford, and State of Kansas, on the 3rd day of June, A. D. 1908, the above named defendant, J. H. Williams, did then and there, unlawfully offer for sale, sell and deliver to one

John Thomas, a coal miner, employed in shaft #17 of the Central Coal and Coke Company, a certain quantity of black powder, to be used in said coal mines situated in Crawford County, Kansas, said black powder then and there not being in an original package containing twelve and one half pounds, securely sealed, and there being at that time no existing contract for the sale of black powder to be used in said mines, contrary to the Statutes in said cases provided, and against the peace and dignity of the State of Kansas.

FRANK GILDAY.

Subscribed and sworn to before me this the 6th day of June, A. D. 1908.

O. S. CASAD,
Justice of the Peace.

STATE OF KANSAS,
Crawford County, ss:

I hereby certify that the above and foregoing is a true copy of the original Complaint in the above entitled case, as the same remains on file in my office, Pittsburg, Kan., June 6 1908.

O. S. CASAD,
Justice of the Peace.

Endorsed: No. —. The State of Kansas, Pl'ff. vs. J. H. Williams, Def't. Complaint. Copy. W. J. True.

37 EXHIBIT C.

STATE OF KANSAS,
Crawford County, ss:

The State of Kansas to the Sheriff or any Constable of Crawford County:

Whereas, complaint in writing, under oath of Frank Gilday has been made to me, and it appearing that there are reasonable grounds for believing that on the 3d day of June 1908, in Crawford County and State of Kansas, one J. H. Williams did then and there unlawfully offer for sale, sell and deliver to one John Thomas, a coal miner, employed in shaft #17 of the Central Coal and Coke Company, a certain quantity of black powder, to be used in said coal mines situated in Crawford County, Kansas, said black powder then and there not being in an original package containing twelve and one half pounds, securely sealed, and there being at that time no existing contract for the sale of black powder to be used in said mines, contrary to the provisions of the statutes in such cases made and provided, and against the peace and dignity of the State of Kansas.

You are therefore commanded, forthwith to arrest said J. H. Williams and bring him before me at my office Pittsburg in Baker township in said County, to answer to said charge; and then and there return this writ.

Witness my hand at my office in Pittsburg in Baker township in said County, this 6th day of June 1908.

O. S. CASAD,
Justice of the Peace.

STATE OF KANSAS,
Crawford Co., ss:

I hereby certify that the above and foregoing is a true copy of the original warrant in the above entitled case as the same is on file in my office.

O. S. CASAD,
Justice of the Peace.

38 Endorsed: No. —. Warrant. The State of Kansas, Plaintiff, vs. J. H. Williams, Defendant. Filed this 6 day of June, 1908. —— ——, Justice of the Peace. Received this Writ June 6, 1908. June 6, 1908, Executed the same by arresting the within named J. H. Williams and bring- him before the within named Justice of the Peace. J. E. Walsh, Sheriff. Crawford County Kansas. Constable's Fees: Serving Writ (First Person), $.75; Total, $.75. J. E. Walsh, Sheriff.

39 EXHIBIT D.

In the Justice Court, before O. S. Casad, Justice of the Peace, in and for the City of Pittsburg, Crawford County, Kansas.

THE STATE OF KANSAS, Plaintiff,
vs.
J. H. WILLIAMS, Defendant.

Stipulation.

It is stipulated in the above entitled case, that in the county of Crawford and State of Kansas on the 3d day of June A. D. 1908, the defendant in this case did sell and deliver to John Thomas in said county and state, a coal miner, employed in shaft number seventeen (17) of the Central Coal & Coke Company, within said county and state a certain quantity of black powder to be used in said coal mine, situated in said county and state, said black powder then and there not being in an original package, containing twelve and one half pounds, securely sealed, and that then and there, there was not an existing contract for the sale of black powder, to be used in said mine.

It is further agreed that said sale and delivery was made in the usual course of business and the said John Thomas presented himself voluntarily to buy the same and that the same was sold as above stated, in the usual and ordinary course of business.

The defendant contends that chapter 250 of the Laws of Kansas of 1907 under which the arrest in this case is made, is unconstitutional and void, as violative of section one, of the Bill of Rights,

of the State of Kansas and also void because it is the violation of section one, of article fourteen (14) of the amendments to the constitution of the United States.

In testimony whereof, We have hereunto subscribed our names this 6th day of June, 1908.

MORRIS CLIGGETT,
Att'y for Defendant.
W. J. TRUE,
Ass't Prosecuting Att'y, Crawford Co., Kans.

40 STATE OF KANSAS,
Crawford County, ss:

I hereby certify the above and foregoing to be a full, true and correct copy of the original stipulation in the above entitled case now on file in my office.

In testimony whereof I have hereunto subscribed my name this 6 day of June 1908.

O. S. CASAD,
Justice of the Peace.

Endorsed: No. —. The State of Kansas, Pl'ff, vs. J. H. Williams, Def't. Stipulation.

(Here follows fac-simile of page of Journal, marked pp. 41, 42, 43, 44.)